LEGISLATURE OF THE STATE OF IDAHO

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RELATING TO HOSPITALIZATION OF MENTALLY ILL; AMENDING SECTION 66-317, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 66-326, IDAHO CODE, TO PROVIDE THAT MENTAL HEALTH PSYCHIATRIC NURSE PRACTITIONERS MAY DETAIN AN ALLEGED EMERGENCY MENTALLY ILL PATIENT WITHOUT HEARING; AMENDING SECTION 66-329, IDAHO CODE, TO PROVIDE THAT MENTAL HEALTH PSYCHIATRIC NURSE PRACTITIONERS MAY COMMENCE PROCEEDINGS FOR THE INVOLUNTARY CARE AND TREATMENT OF MENTALLY ILL PERSONS BY THE DEPARTMENT OF HEALTH AND WELFARE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 66-317, Idaho Code, be, and the same is hereby amended to read as follows:

- 66-317. DEFINITIONS. As used in this chapter, terms shall have the following meanings:
- (1) "Department director" means the director of the state department of health and welfare.
- (2) "Voluntary patient" means an individual admitted to a facility for evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a facility for observation, diagnosis, evaluation, care or treatment pursuant to section 66-318, Idaho Code.
- (3) "Involuntary patient" means an individual committed pursuant to section 18-212, 66-329 or 66-1201, Idaho Code, or committed pursuant to section 16-1619 or 20-520, Idaho Code, and admitted to a facility for the treatment of minors.
- (4) "Licensed physician" means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.
- (5) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.
- (6) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.
- (7) "Facility" means any public or private hospital, sanatorium, institution, mental health center or other organization designated in accordance with rules adopted by the board of health and welfare as equipped to

initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

- (8) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.
- (9) "Inpatient treatment facility" means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.
- (10) "Supervised residential facility" means a facility, other than the individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.
 - (11) "Likely to injure himself or others" means either:
 - (a) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or
 - (b) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
 - (c) The proposed patient lacks insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, inflict physical harm on himself or another person.
- (12) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility or through outpatient treatment.
- (13) "Gravely disabled" means a person who, as the result of mental illness, is:
 - (a) In danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs, such as nourishment, or essential clothing, medical care, shelter or safety; or
 - (b) Lacking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.
- (14) "Outpatient treatment" means mental health treatment, not involving the continuous supervision of a person in an inpatient setting, that is reasonably designed to alleviate or to reduce a person's mental illness or to

maintain or prevent deterioration of the person's physical, mental or emotional functioning. Mental health services or treatment may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy.

- (15) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. section 15043 and 42 U.S.C. sections 10801 et seq.
- (16) "Holding proceedings in abeyance" means an alternative to judicial commitment based upon an agreement entered into by all parties, including the proposed patient, and agreed to by the court, providing for voluntary conditions of treatment, which holds in a state of suspension or inactivity the petition for involuntary commitment.
- (17) "Nurse practitioner" means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.
- SECTION 2. That Section 66-326, Idaho Code, be, and the same is hereby amended to read as follows:
- 66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section 66-329, Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer, a mental health psychiatric nurse practitioner or a physician medical staff member of such hospital has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses. For purposes of this section, the term "peace officer" shall include state probation and parole officers exercising their authority to supervise probationers and parolees. Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the claim of grave disability due to mental illness or imminent danger must be presented to a duly authorized court within twenty-four (24) hours from the time the individual was placed in custody or detained.
- (2) If the court finds the individual to be gravely disabled due to mental illness or imminently dangerous under subsection (1) of this section, the court shall issue a temporary custody order requiring the person to be held in a facility, and requiring an examination of the person by a designated examiner within twenty-four (24) hours of the entry of the order of the court. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

- (3) Where an examination is required under subsection (2) of this section, the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.
- (4) If the designated examiner finds, in his examination under this section, that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled due to mental illness, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the patient's detention pending commitment proceedings pursuant to the provisions of section 66-329, Idaho Code. Upon the receipt of such a petition, the court shall order his detention to await hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of the detention order. If no petition is filed within twenty-four (24) hours of the designated examiner's examination of the person, the person shall be released from the facility.
- (5) Any person held in custody under the provisions of this section shall have the same protection and rights which are guaranteed to a person already committed to the department director. Upon taking a person into custody, notice shall be given to the person's immediate relatives of the person's physical whereabouts and the reasons for detaining or taking the person into custody.
- (6) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another facility that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment.
- SECTION 3. That Section 66-329, Idaho Code, be, and the same is hereby amended to read as follows:
- 66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDI-CIAL PROCEDURE. (1) Proceedings for the involuntary care and treatment of mentally ill persons by the department of health and welfare may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, or by a licensed physician, a mental health psychiatric nurse practitioner, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or the director of any facility in which such patient may be.
- (2) The application shall state the name and last known address of the proposed patient; the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; whether the proposed patient can be cared for privately in the event commitment is not ordered; if the proposed patient is, at the time of the application, a voluntary patient; whether the proposed patient has applied for release pursuant to section 66-320, Idaho Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness.
- (3) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient is: (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to

make informed decisions about treatment, or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.

- Upon receipt of an application for commitment, the court shall, (4)within forty-eight (48) hours appoint another designated examiner to make a personal examination of the proposed patient or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. reports shall be in the form of written certificates which shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released immediately.
- (5) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section 66-346(a)(4), Idaho Code. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.
- (6) Upon receipt of such application and designated examiners' reports the court shall appoint a time and place for hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon give written notice of such time and place of such hearing together with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin or friend. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the proposed patient and attorney and for good cause shown, the court may continue the hearing up to an additional fourteen (14) days during which time, for good cause shown, the court may authorize treatment.
- (7) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, ti-

tle 19, Idaho Code, no later than the time the application is received by the court.

- (8) If the involuntary detention was commenced under this section, the hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient or in the county where the proposed patient was found immediately prior to commencement of such proceedings.
- (9) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.
- (10) The proposed patient, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.
- (11) If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives including, but not limited to, holding the proceedings in abeyance for a period of up to thirty (30) days, the court finds by clear and convincing evidence that the proposed patient:
 - (a) Is mentally ill; and
 - (b) Is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;
- the court shall order the proposed patient committed to the custody of the department director for observation, care and treatment for an indeterminate period of time not to exceed one (1) year. The department director, through his dispositioner, shall determine within twenty-four (24) hours the least restrictive available facility or outpatient treatment, consistent with the needs of each patient committed under this section for observation, care, and treatment.
- (12) The commitment order constitutes a continuing authorization for the department of health and welfare, law enforcement, or director of a facility, upon request of the director of the outpatient facility, the physician, or the department director through his dispositioner, to transport a committed patient to designated outpatient treatment for the purpose of making reasonable efforts to obtain the committed patient's compliance with the terms and conditions of outpatient treatment. If the director of the outpatient facility, the treating physician, or the department director through his dispositioner determines any of the following:

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- (a) The patient is failing to adhere to the terms and conditions of outpatient treatment or the patient refuses outpatient treatment after reasonable efforts at compliance have been made; or
 - (b) Outpatient treatment is not effective after reasonable efforts have been made;

the department director through his dispositioner shall cause the committed patient to be transported by the department of health and welfare, law enforcement, or director of a facility to the least restrictive available facility for observation, care and treatment on an inpatient basis. Within forty-eight (48) hours of a committed patient's transfer from outpatient treatment to a facility for inpatient treatment, the department director through his dispositioner shall notify the court that originally ordered the commitment, the committed patient's attorney, and either the committed patient's spouse, guardian, adult next of kin or friend of the change in disposition and provide a detailed affidavit reciting the facts and circumstances supporting the transfer from outpatient treatment to inpatient treatment at a facility. The court shall conduct an ex parte review of the notice and affidavit within forty-eight (48) hours of filing and determine whether the change in disposition from outpatient treatment to inpatient treatment at a facility is supported by probable cause. In no event shall the calculation of forty-eight (48) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that probable cause exists, the department director through his dispositioner shall continue with care and treatment on an inpatient basis at the least restrictive available facility. Within twenty-four (24) hours of a finding of probable cause, the court shall issue an order to show cause why the patient does not meet the conditions in subsection (12)(a) or (12)(b) of this section. The order shall be served on the committed patient, the committed patient's attorney and either the committed patient's spouse, guardian, adult next of kin or friend. The patient shall have fifteen (15) days to present evidence that the conditions in subsection (12)(a) or (12)(b) of this section have not been met. In no event shall the calculation of twenty-four (24) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that a change in disposition from outpatient treatment to inpatient treatment does not meet the conditions in subsection (12)(a) or (12) (b) of this section, the department director through his dispositioner will continue with outpatient treatment on the same or modified terms and conditions. Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section 66-326, Idaho Code.

- (13) Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:
 - (a) Has epilepsy, a developmental disability, a physical disability, an intellectual disability, is impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill;

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- (b) Is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority; or
- (c) Can be properly cared for privately with the help of willing and able family or friends, and provided, that such person may be detained or involuntarily admitted if such person is mentally ill and presents a substantial risk of injury to himself or others if allowed to remain at liberty.
- (14) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and either the patient's spouse, guardian, adult next of kin, or friend.
- (15) If the patient has no spouse or quardian and if the patient has property which may not be cared for pursuant to chapter 5, title 66, Idaho Code, or by the patient while confined at a facility, the court shall appoint a guardian ad litem for the purpose of preserving the patient's estate, pending further guardianship or conservatorship proceedings.
- (16) The commitment shall continue until the commitment is terminated and shall be unaffected by the patient's conditional release or change in disposition.

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- 1 Amends existing law to define a term; to provide that mental health psychi-
- 2 atric nurse practitioners may detain an alleged emergency mentally ill pa-
- 3 tient without hearing; and to provide that mental health psychiatric nurse
- 4 practitioners may commence Proceedings for the involuntary care and treat-
- 5 ment of mentally ill persons by the department of health and welfare.